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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,232	07/25/2003	George Van Campen	1027.P005USC1	2443
29053	7590	05/10/2006	EXAMINER	
DALLAS OFFICE OF FULBRIGHT & JAWORSKI L.L.P. 2200 ROSS AVENUE SUITE 2800 DALLAS, TX 75201-2784			FAULCON JR, LENWOOD	
		ART UNIT	PAPER NUMBER	
		3762		

DATE MAILED: 05/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/627,232	CAMPEN ET AL.
	<b>Examiner</b> Lenwood Faulcon, Jr.	<b>Art Unit</b> 3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 24 April 2006.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 24-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) \_\_\_\_\_ is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)  
6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Amendment***

1. The amendment filed April 24, 2006, is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: Amended paragraph 65, a repetition means operating to repeat pulses for a particular stimulation set before switching to the next stimulation set "independent of the stimulation frequency parameters associated with the stimulation set(s)."

Applicant is required to cancel the new matter in the reply to this Office Action.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 24 and 28 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

In regards to claims 24 and 28, Examiner takes the position that the specification as originally filed, would not convey to one having ordinary skill in the art that the repetition parameter defines a number of pulses to be generated for a set of stimulation

pulses within a cycle “independent from one or several pulse frequency parameters associated with the plurality of stimulation sets.” Further in regards to claim 28, the specification does not appear to provide support for the pulse generator to “generate adjacent pulses according to a frequency parameter.”

***Claim Rejections - 35 USC § 103***

4. Claims 24, 26-28 and 30-31 stand rejected under 35 U.S.C. 103(a) as being unpatentable over North et al. (U.S. 2001/0007950) in view of as applied in the previous Office Action of July 27, 2005, and further in view of Reiss (U.S. Patent No. 5,324,317). as applied in the previous Office Action of February 24, 2006.

Examiner maintains the position that the Reiss reference teaches an interferential stimulator that comprises a repetition parameter (col. 1 lines 62-68 and col. 2 lines 1-16). Examiner notes that Applicant takes the position that the Reiss reference “merely discloses repeatedly switching back and forth between a high rate of stimulation and a lower rate of stimulation” (page 8 lines 24-25 of Applicant’s Remarks); Examiner also takes the position that Applicant’s interpretation is also defining a repetition parameter that controls repetition of stimulation pulses. Examiner also broadly interprets the Reiss reference of teaching of stimulation sets including a higher pulse rate and the lower pulse rate, as being part of a definable cycle (mode), in which the repetition parameter switches between the higher and lower pulse rates (col. 1 lines 62-68 and col. 2 lines 1-16)

5. Claims 25 and 29 stand rejected under 35 U.S.C. 103(a) as being unpatentable over North et al. (U.S. 2001/0007950) in view of Lynch (U.S. Patent No. 5,038,781) as

applied in the previous Office Action of July 27, 2005, and further in view of Reiss (U.S. Patent No. 5,324,317) as applied in the previous Office Action of February 24, 2006, and above.

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kastrubin et al. (U.S. Patent No. 4,121,593), Stanton (U.S. Patent No. 4,392,496), Lynch (U.S. Patent No. 4,934,368), Mullet (U.S. Patent No. 5,031,618), Campos (U.S. Patent No. 5,097,833), Collins (U.S. Patent No. 5,251,621), Schaldach et al. (U.S. Patent No. 5,354,320), Madsen et al. (U.S. Patent No. 5,776,173), Michelson et al. (U.S. Patent No. 6,445,955), Deno et al. (U.S. 2004/0049235), Skolnick (WO 87/07511).

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lenwood Faulcon, Jr. whose telephone number is 571-272-6090. The examiner can normally be reached on Monday-Thursday from 9 to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela D. Sykes, can be reached on 571-272-4955. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Lenwood Faulcon, Jr.

  
Angela Sykes

Supervisory Examiner

ANGELA D. SYKES  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700